

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In Re:	§	Chapter 11
	§	
W.R. GRACE & CO., et al.,	§	Jointly Administered
	§	Case No. 01-01139 (JKF)
Debtors.	§	
	§	

**FEE AUDITOR'S FINAL REPORT REGARDING
FEE APPLICATION OF ORRICK, HERRINGTON & SUTCLIFFE LLP
FOR THE TWENTY-SIXTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Fee Application of Orrick, Herrington & Sutcliffe LLP for the Twenty-Sixth Interim Period (the “Application”).

BACKGROUND

1. Orrick, Herrington & Sutcliffe LLP (“Orrick”) was retained as bankruptcy counsel to David T. Austern, future claimants’ representative. In the Application, Orrick seeks approval of fees totaling \$1,318,928.25 and expenses totaling \$503,330.27 for its services from July 1, 2007 through September 30, 2007 (the “Application Period”).

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2006, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, Issued

January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Orrick, and received a response from Orrick, portions of which response are quoted herein.

DISCUSSION

General Issues

3. In our initial report, we noted that Orrick appeared to be charging 15¢ per page for its in-house photocopies. Effective February 1, 2006, the Delaware Local Rules were amended so as to allow a maximum of 10¢ per page for photocopies. Pursuant to our inquiry on this issue, Orrick responded:

The Report states that the current allowed rate for in-house photocopies is .10 cents per page and Orrick charged .15 cents per page. Orrick agrees that this reduction should be made. During the Application Period, Orrick reproduced 224,869 in-house photocopies at the rate of .15 cents per page for a total of \$33,730.35; the corrected rate of .10 cents per page for 224,869 pages totals \$22,486.90. Orrick agrees to the reduction of \$11,243.45 (\$33,730.35 less \$22,486.90) relating to this expense item. Additionally, Orrick will correct this expense item in its Eighth Quarterly Fee Application for the period October 1, 2007 through December 31, 2007, which has not yet been filed with the Court, and has updated its systems to charge 10 cents per page for its January 2008 invoice and future invoices.

We appreciate Orrick's response and recommend a reduction of \$11,243.45 in expenses.

Specific Time and Expense Entries

4. In our initial report, we noted that between August 1, 2007 and August 24, 2007, Timekeeper J. Cangialosi, billing at an hourly rate of \$235.00, spent 49.50 hours for total fees of \$11,632.50 on a task described as "assist attorney re preparation of materials for experts." The time

entries are as follows:

08/01/07	JC	3.50	Assist attorney re preparation of materials for experts.
08/06/07	JC	3.50	Assist attorney re preparation of materials for experts.
08/07/07	JC	2.50	Assist attorney re preparation of materials for experts.
08/08/07	JC	1.00	Assist attorney re preparation of materials for experts.
08/10/07	JC	1.00	Assist attorney re preparation of materials for experts.
08/13/07	JC	6.50	Assist attorney re preparation of materials for experts.
08/14/07	JC	6.50	Assist attorney re preparation of materials for experts.
08/15/07	JC	4.00	Assist attorney re preparation of materials for experts.
08/20/07	JC	6.50	Assist attorney re preparation of materials for experts.
08/21/07	JC	6.50	Assist attorney re preparation of materials for experts.
08/22/07	JC	4.00	Assist attorney re preparation of materials for experts.
08/23/07	JC	2.00	Assist attorney re preparation of copies of expert reports and related materials.
08/24/07	JC	2.00	Assist attorney re preparation of copies of expert reports and related materials.
			49.50

Thus, we asked Orrick to provide more detail concerning the specific tasks being performed by Timekeeper Cangialosi in these time entries. Orrick responded as follows:

The Report identifies thirteen time entries by legal assistant James Cangialosi between August 1, 2007 and August 24, 2007, as containing insufficient detail to determine the work performed. Mr. Cangialosi has reviewed these entries and stated that each one relates to his work identifying and organizing, collating and labeling Personal Injury Questionnaires for meso, malignant, other malignant, and lung cancer claimants, in order to provide to the FCR's experts, Messrs. Jacoby and Kaplan, for their review.

We accept Orrick's response and have no objection to these fees.

5. In our initial report, we noted that during the Application Period there were \$2,956.38 in expenses described only as "outside services." Thus, we asked Orrick to explain the nature of these expenses. Orrick responded as follows:

The Report identifies \$2,956.38 in expenses which were described as "outside services." This expense relates to the following:

a. Pacer Delaware Bankruptcy Court electronic charges incurred in

obtaining case dockets and downloads of pleadings filed in the main bankruptcy case and related adversary and appeal cases in the amount of \$1,663.68;

b. Charges for CourtCall, the company engaged for coordinating telephonic participation at Court hearings, in the amount of \$1,152.50;

c. Charges for Parcels, a document retrieval company in Delaware, in the amount of \$25.20; and

d. The remaining amount of \$115.00 cannot be reconciled at this time. In the interest of saving time and additional expense, Orrick agrees to deduct this amount from its total expenses during the Application Period.

We appreciate Orrick's response and recommend a reduction of \$115.00 in expenses.

6. In our initial report, we noted that included in the receipts provided by the firm were unitemized receipts from the Omni William Penn Hotel reflecting Visa deposits of \$4,897.44, \$4,897.44, and 9,794.88. Thus, we asked for an itemization of these charges. Orrick provided us with copies of the hotel receipts and responded as follows:

These charges constitute the total of \$19,589.76 in hotel charges listed on the firm's expense summary for the Application Period. All of these items relate to the deposits to reserve hotel rooms and war room space during three separate sets of trial days in this matter: January 11-24, February 29-March 6, March 21-April 17, 2007.¹ Attached are copies of the receipts for each expense.

We reviewed copies of the Group Agreements which Orrick executed with the Omni William Penn Hotel and note that the room rates obtained by Orrick are well within the \$250.00 per night guideline which we apply to most locales. Also, the "war room" or conference room space is \$400.00 per day which does not appear unreasonable for a large hotel in this area. Thus, we accept Orrick's response

¹We note that although Orrick's response indicates these deposits were for rooms used during 2007, the Group Agreements provided by Orrick reflect that all of the reservation dates were for 2008. Thus, to the extent that there are future cancellations, we would expect Orrick to credit the estate for any unused deposits.

and have no objection to these expenses.

7. In our initial report, we noted that included in the receipts provided by the firm were duplicate copies of a receipt for \$428.95 for the Renaissance Hotel. The receipt indicates that the room rate was \$349.00 per night. In response to our request for more information concerning this charge, Orrick advised as follows:

The Report identifies duplicate copies of a receipt for \$428.95 for The Renaissance Hotel in Washington, DC. This receipt was attached twice by Orrick, in two different categories, one in "Hotel" expenses (\$400.24) and one in "Meal" charges (\$28.71), but there was no duplicate charge by Orrick; each appropriate amount was charged to its respective expense category. These charges relate to Catharine Zurbrugg's travel from Orrick's NY office to Washington, DC in connection with depositions...

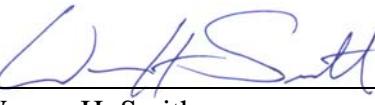
We accept Orrick's response with respect to the portion of the charge attributable to meals. However, it appears to us that one can obtain satisfactory lodging in Washington, DC, for \$300.00 per night, plus taxes. Thus, with respect to the \$349.00 room rate, we recommend a reduction of \$49.00 in expenses.

CONCLUSION

In summary, we recommend approval of \$1,318,928.25 in fees and \$491,922.82 in expenses (\$503,330.27 minus \$11,407.45) for Orrick's services for the Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 

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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 29th day of February, 2008.


Warren H. Smith

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